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BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307  
FACSIMILE 202-783-6947

lgitomer@dc.bjllp.com

LOUIS E. GITOMER  
OF COUNSEL  
(202) 466-6532

December 23, 2003

DEC 23 2003

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D. C. 20423

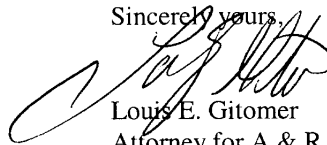
**RE:** Docket No. AB-847 (Sub-No. 2X), *Toledo, Peoria & Western Railway Corporation-Discontinuance Exemption-(Between Kenneth and Winamac) in Cass and Pulaski Counties, IN*  
Docket No. AB-855 (Sub-No. 1X), *A & R Line, Inc.-Abandonment Exemption-(Between Kenneth and Winamac) in Cass and Pulaski Counties, IN*

Dear Secretary Williams:

Enclosed are the original and 10 copies of a Motion and three computer diskettes. Please time and date stamp the additional copy of this letter and the response and return them with our messenger. Thank you for your assistance.

If you have any questions, call or email me.

Sincerely yours,



Louis E. Gitomer  
Attorney for A & R Line, Inc. and  
Toledo, Peoria & Western  
Railway Corporation

Enclosures



**ORIGINAL**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. AB-847 (Sub-No. 2X)

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OFFICE OF THE  
CLERK OF THE BOARD

DEC 23 2003

U.S. DEPARTMENT OF  
TRANSPORTATION

TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION-DISCONTINUANCE  
EXEMPTION-(BETWEEN KENNETH AND WINAMAC) IN CASS AND PULASKI  
COUNTIES, IN

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Docket No. AB-855 (Sub-No. 1X)

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A & R LINE, INC.-ABANDONMENT EXEMPTION-(BETWEEN KENNETH AND  
WINAMAC) IN CASS AND PULASKI COUNTIES, IN

MOTION TO AMEND PLEADINGS AND DECISIONS AND HOLD OFFER OF FINANCIAL  
ASSISTANCE PROCESS IN ABEYANCE

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**EXPEDITED HANDLING REQUESTED**

Gary A. Laakso, Esq.  
Vice President Regulatory Counsel  
RailAmerica, Inc.  
5300 Broken Sound Boulevard N.W.  
Second Floor  
Boca Raton, FL 33487  
(561) 994-6015

Louis E. Gitomer, Esq.  
Of Counsel  
BALL JANIK LLP  
1455 F Street, N.W., Suite 225  
Washington, D.C. 20005  
(202) 638-3307

Attorneys for: A&R LINE, INC. and  
TOLEDO, PEORIA & WESTERN  
RAILWAY CORPORATION

Dated: December 23, 2003

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. AB-847 (Sub-No. 2X)

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TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION-DISCONTINUANCE  
EXEMPTION-(BETWEEN KENNETH AND WINAMAC) IN CASS AND PULASKI  
COUNTIES, IN

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Docket No. AB-855 (Sub-No. 1X)

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A & R LINE, INC.-ABANDONMENT EXEMPTION-(BETWEEN KENNETH AND  
WINAMAC) IN CASS AND PULASKI COUNTIES, IN

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MOTION TO AMEND PLEADINGS AND DECISIONS AND HOLD OFFER OF FINANCIAL  
ASSISTANCE PROCESS IN ABEYANCE

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Toledo, Peoria & Western Railway Corporation ("TP&W") and A & R Line, Inc. ("A&R"), collectively Petitioners, pursuant to 49 C.F.R. § 1117.1 respectfully request the Surface Transportation Board ("Board") to permit them to amend their pleadings filed in the instant proceedings, and to amend the decisions it has served in these proceedings to correct an inadvertent misstatement of the mileage involved in the abandonment and discontinuance. Petitioners also respectfully request the Board to hold the offer of financial assistance process in abeyance while this Motion is decided. Petitioners have consistently and erroneously stated that the length of the line sought to be abandoned and discontinued is 15.9 miles, when in actuality it is 21.0 miles.

In the Environmental Report ("ER"), the Historic Report ("HR"), and the Petition for Exemption filed on July 31, 2003 (the "Petition"), Petitioners described the line for which

exemption was sought to abandon and discontinue service over the line as a 15.9-mile rail line between milepost 5.1W near Kenneth, IN, and milepost 21.0W, near Winamac, IN, the end of the line, in Cass and Pulaski Counties, IN (the "Line"). The Board adopted Petitioners' mileage in the notice of the Petition and in the decision granting the Petition.<sup>1</sup> The Board postponed the effective date of the exemption because Kokomo Grain Company ("Kokomo") is financially responsible and has offered financial assistance.<sup>2</sup>

Petitioners became aware of their error when analyzing the offer of financial assistance filed by the Kokomo in preparing to respond to a request to set terms. Petitioners realized that the distance of the line between Kenneth and Winamac, IN was 21.0 miles, not the 15.9 miles presented in the ER, HR and Petition.

Petitioners have consistently described the Line as running between Kenneth and Winamac, at 21-mile length. In the HR, Petitioners described the line running between Kenneth and Winamac in great detail.<sup>3</sup> Throughout this proceeding, the line has been described over its 21-mile length between Kenneth and Winamac.

Petitioners' misstatement of the mileage arose because of the differing mileposts along the Line. In particular, at Kenneth, there are two current milepost designations, one is milepost 5.1W, which has been used in this proceeding.<sup>4</sup> The other is milepost 0.0. Milepost 5.1W and milepost 0.0 are at the same location. Petitioners erroneously calculated the distance between

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<sup>1</sup> *Toledo, Peoria & Western Railway Corporation—Discontinuance Exemption—in Starke and Pulaski Counties, IN*, STB Docket No. 847 (Sub-No. 1X) (STB served August 20, 2003 and November 18, 2003).

<sup>2</sup> *Toledo, Peoria & Western Railway Corporation—Discontinuance Exemption—in Starke and Pulaski Counties, IN*, STB Docket No. 847 (Sub-No. 1X) (STB served December 3, 2003).

<sup>3</sup> See Petition, pages 58-59.

<sup>4</sup> The Line has had five owners since 1976, each with their own set of mileposts. Petition at 60-61.

Kenneth and Winamac by subtracting milepost 5.1W from milepost 21.0W, instead of subtracting milepost 0.0 from milepost 21.0W, which would have resulted in the proper mileage of 21 miles. Petitioners respectfully request the Board to accept this Motion as an amendment to the ER, HR and Petition to correct the length of the Line to 21 miles, and to correct the decision granting the Petition.

Petitioners contend that none of the parties to this proceeding have been harmed by Petitioners' erroneous calculation of the mileage involved because the line has always been referred to as between Kenneth and Winamac and has been described over its 21-mile length. Petitioners are serving this Motion on the parties to this proceeding, including the parties served with the ER and HR.

Petitioners also request the Board to hold the offer of financial assistance process in abeyance until the Board resolves this issue, so that Kokomo, the current offeror, will have the opportunity to determine whether it desires to make an offer for the entire 21-mile line. Petitioners agree to an additional short period for Kokomo to submit a revised offer of financial assistance for the entire 21.0-mile line between Kenneth and Winamac. Petitioners have provided Kokomo with data for the entire 21 miles. Petitioners also agree to the filing of a revised trail use request for the 21-mile line between Kenneth and Winamac.

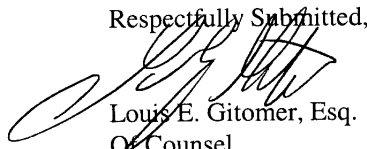
Petitioners respectfully request the Board to grant this request to amend the ER, HR, and Petition to reflect the correct length of the Line as 21 miles. Petitioners further respectfully request the Board to revise the decisions served in this proceeding to reflect the correct length of the Line as 21 miles. Petitioners further respectfully request that the Board hold the offer of financial assistance process in abeyance until the Board rules on this Motion, and if it is granted, give Kokomo an additional short time period to amend its offer. Petitioners respectfully request

that additional time also be provided for the filing of a revised trail use request. Finally,

Petitioners apologize to the Board for the error.

Gary A. Laakso, Esq.  
Vice President Regulatory Counsel  
RailAmerica, Inc.  
5300 Broken Sound Boulevard N.W.  
Second Floor  
Boca Raton, FL 33487  
(561) 994-6015

Respectfully Submitted,



Louis E. Gitomer, Esq.  
Of Counsel  
BALL JANIK LLP  
1455 F Street, N.W., Suite 225  
Washington, D.C. 20005  
(202) 638-3307

Attorneys for: A&R LINE, INC. and  
TOLEDO, PEORIA & WESTERN  
RAILWAY CORPORATION

Dated: December 23, 2003

### **CERTIFICATE OF SERVICE**

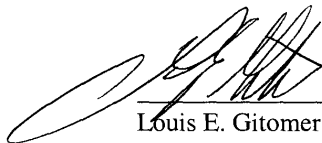
The undersigned hereby certifies that this Response was mailed via first class mail, postage prepaid, on December 23, 2003, to the parties required to be served with the Environmental Report and the Historic Report and the following parties:

Indiana Department of Transportation  
100 N. Senate Ave  
IGC-N Room N901  
Indianapolis, IN 46204-2219

Board of Commissioners-Pulaski County  
Courthouse – Room 200  
112 East Main Street  
Winamac, IN 46996

Thomas F. McFarland  
208 South LaSalle Street – Suite 1890  
Chicago, IL 60604-1112

Indiana Trails Fund, Inc.  
P.O. Box 402  
Indianapolis, IN 46206-0402

  
Louis E. Gitomer

December 23, 2003